

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD ROY SCOTT,

Plaintiff,

v.

VAN HOOK,

Defendant.

CASE NO. 3:16-CV-05785-RBL-DWC

REPORT AND RECOMMENDATION

Noting Date: January 6, 2017

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Plaintiff Richard Roy Scott filed a “Motion for TRO Medical Services” (“Motion”) on December 7, 2016. Dkt. 24. The Court concludes Plaintiff is seeking injunctive relief on a matter unrelated to the Complaint. Accordingly, the Court recommends the Motion be denied.

**BACKGROUND**

Plaintiff, a civil detainee housed at the Special Commitment Center (“SCC”), filed a Complaint alleging his constitutional rights are being violated by Defendant Van Hook, the CEO of the SCC. Dkt. 3. Specifically, Plaintiff alleges he is being forced to live in inhumane

1 conditions of confinement due to staff shortages, inadequate medical care, environmental  
 2 tobacco smoke, inadequate lighting, and an inadequate kitchen in violation of his Fourteenth  
 3 Amendment rights. *Id.*

4 In his Motion, Plaintiff seeks a Court order stating Defendant “may not house seriously  
 5 ill person (sic) at SCC” and requiring Defendant to remove seriously ill detainees from McNeil  
 6 Island within 30 days. Dkt. 24, p. 3.

## 7 DISCUSSION

8 The purpose of preliminary injunctive relief is to preserve the status quo or prevent  
 9 irreparable injury pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix*  
 10 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A plaintiff seeking a preliminary injunction  
 11 must establish” (1) “he is likely to succeed on the merits,” (2) “he is likely to suffer irreparable  
 12 harm in the absence of preliminary relief,” (3) “the balance of equities tips in his favor,” and (4)  
 13 “an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20,  
 14 (2008). The Ninth Circuit also allows for the “serious questions” variation of the test, where “a  
 15 preliminary injunction is proper if there are serious questions going to the merits; there is a  
 16 likelihood of irreparable injury to the plaintiff; the balance of hardships tips sharply in favor of  
 17 the plaintiff; and the injunction is in the public interest.” *Lopez v. Brewer*, 680 F.3d 1068, 1072  
 18 (9th Cir. 2012).

19 In a preliminary injunction, it is appropriate to grant “intermediate relief of the same  
 20 character as that which may be granted finally.” *De Beers Consol. Mines v. U.S.*, 325 U.S. 212,  
 21 220 (1945); *Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir. 1997). However, a court should  
 22 not issue an injunction when the relief sought is not of the same character and the injunction  
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1 deals with a matter lying wholly outside the issues in the underlying action. *De Beers Consol.*  
 2 *Mines*, 325 U.S. at 220.

3 In the Motion, Plaintiff requests any person who is seriously ill be removed from the  
 4 SCC. Dkt. 24, pp. 2-3 (naming 20 individuals whom he presumably seeks to have removed). In  
 5 his Complaint, Plaintiff does not seek removal of ill individuals from the SCC or allege his rights  
 6 are being violated because he is housed with seriously ill detainees. *See* Dkt. 3. Additionally,  
 7 Plaintiff is not seeking to preserve the status quo of the case pending resolution of the underlying  
 8 claims. He is seeking a separate remedy unrelated to the allegations raised in his Complaint. *See*  
 9 Dkt. 3, 24. As the relief sought in the Motion is beyond the scope of the claims raised in his  
 10 Complaint, the Motion should be denied. *See Pac. Radiation Oncology, LLC v. Queen's Med.*  
 11 *Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015) (“When a plaintiff seeks injunctive relief based on claims  
 12 not pled in the complaint, the court does not have the authority to issue an injunction.”).

### 13 CONCLUSION

14 Plaintiff’s Motion requests relief unrelated to the claims in the underlying lawsuit.  
 15 Accordingly, the undersigned recommends Plaintiff’s Motion (Dkt. 24) be denied. Plaintiff has  
 16 also attached a document to the Motion entitled “Motion for TRO to be Heard on Shorten Notice  
 17 Note for ASAP.” Dkt. 24-1. The Motion was noted for the same day it was filed; therefore, to the  
 18 extent Plaintiff is seeking relief in the “Motion for TRO to be Heard on Shorten Notice Note for  
 19 ASAP” (Dkt. 24-1), the Court denies this request as moot.

20 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
 21 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
 22 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
 23 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time  
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1 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on January  
2 6, 2017, as noted in the caption.

3 Dated this 21st day of December, 2016.

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6 David W. Christel  
7 United States Magistrate Judge  
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